

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

June 27, 2005

IN RE:

**BELLSOUTH'S WITHDRAWAL OF ITS STATEMENT
OF GENERALLY AVAILABLE TERMS AND
CONDITIONS (SGAT)**

**DOCKET NO.
04-00261**

ORDER APPROVING SETTLEMENT OF DISPUTED CLAIMS

This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 10, 2005 for consideration of the *Settlement of Disputed Claims* filed by BellSouth Telecommunications, Inc. ("BellSouth") and Competitive Carriers of the South, Inc. ("CompSouth")¹ on November 15, 2004.

BACKGROUND

On August 17, 2004, BellSouth filed a letter notifying the Authority of its intent to withdraw its Statement of Generally Accepted Terms ("SGAT"). In its letter, BellSouth states that "[t]his action is being taken in response to the mandate issued by the United States Court of Appeals for the District of Columbia effectuating its Opinion released on March 2, 2004."² BellSouth asserts that the SGAT is not compliant with current law because, by virtue of the Court of Appeals' mandate, "as

¹ CompSouth's competitive local exchange carriers ("CLECs") doing business in the Southeast include ITC^DeltaCom, MCI, Access Point, Inc., AT&T Communications of the South Central States, LLC, NuVox Communications, Inc., Access Integrated Networks, Inc., Birch Telecom, Talk America, Z-Tel Communications, Network Telephone Corp., Momentum Telephone, Inc., Covad, KMC Telecom, IDS Telecom, LLC, Xspedius Communications, InLine and LecStar Telecom, Inc. National association members include CompTel/ASCENT and Promoting Active Competition Everywhere (PACE) *Motion of CompSouth to Deny BellSouth's Request to Withdraw Statement of Generally Available Terms and Conditions*, p. 1, n. 1 (August 23, 2004)

² Letter from Guy M. Hicks to Chairman Pat Miller, p. 1 (August 17, 2004)

of June 16, 2004, certain unbundling rules adopted by the [Federal Communications Commission (“FCC”)] in its Triennial Review Order on October 2, 2003, are vacated.”³ In addition, BellSouth notes that no party has elected to operate under the current SGAT and no subscribers will be impacted by the withdrawal.

On August 23, 2004, CompSouth filed the *Motion of CompSouth to Deny BellSouth’s Request to Withdraw Statement of Generally Available Terms and Conditions* (“CompSouth’s Motion”). CompSouth argues that the existence of BellSouth’s SGAT in Tennessee formed at least part of the foundation for the grant of its Section 271⁴ authority. Further, the vacatur of the FCC’s Triennial Review Order does not warrant the elimination of BellSouth’s obligations presently contained in its SGAT. Section 251⁵ contains broad unbundling obligations for BellSouth, and the USTA II decision⁶ did not vacate that federal statute. BellSouth has a separate independent obligation to offer unbundled network elements under Section 271, and USTA II affected none of BellSouth’s obligations under that section. Even those unbundled network elements that may have been affected by USTA II may not be withdrawn until the Authority determines how BellSouth will continue to meet its obligations under the competitive checklist of Section 271 elements. CompSouth also suggests that once the FCC issues its new rules, the “change in law” issue should become more clear, and the parties’ interconnection agreements and the SGAT can be appropriately amended. Therefore, CompSouth requests that the Authority deny BellSouth’s request to withdraw its SGAT and establish an investigation into what changes to the SGAT are appropriate.

On August 31, 2004, CompSouth filed a letter directing the Authority’s attention to the FCC’s recently released Interim Rules Order.⁷ According to CompSouth, the Interim Rules Order

³ *Id*

⁴ 47 U.S.C. § 271

⁵ 47 U.S.C. § 251

⁶ *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“USTA II”)

⁷ *In the Matter of Unbundled Access to Network Elements, Review of the Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313, *Order and Notice of Proposed Rulemaking*, 19 F.C.C.R. 16783 (August 20, 2004) (“Interim Rules Order”)

expressly prohibits BellSouth from withdrawing the SGAT for at least six (6) months. CompSouth asserts that the Interim Rules Order requires incumbent local exchange carriers, including BellSouth, to continue providing unbundled access to mass market switching, enterprise market loops and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements, SGATs and relevant state tariffs as of June 15, 2004⁸

On September 7, 2004, BellSouth requested that consideration of this matter be removed from the September 13, 2004 Authority Conference to allow it to respond to *CompSouth's Motion*.⁹ At the regularly scheduled Authority Conference held on September 13, 2005, the panel voted unanimously to remove the matter from the agenda and to consider it again after BellSouth filed its response.

BellSouth filed *BellSouth's Response to CompSouth's Motion to Deny BellSouth's Request to Withdraw Statement of Generally Available Terms* ("BellSouth's Response") on September 22, 2004. In *BellSouth's Response*, BellSouth urges that *CompSouth's Motion* be denied because: (1) by virtue of the FCC's Interim Rules Order, no Tennessee CLEC can now elect to take service pursuant to the SGAT; (2) there will be no impact on the business operations of any CLEC, including specifically the members of CompSouth, since no CLEC operating in Tennessee is being provided service under the SGAT; and (3) there is no legal requirement that BellSouth maintain an SGAT.¹⁰ BellSouth further argues that granting the relief CompSouth is seeking would be inconsistent with the FCC's Interim Rules Order and would contravene the plain language of Section 252(f)¹¹ by requiring that BellSouth maintain an SGAT that does not comply with the requirements of Section 251 and the regulations thereunder¹²

⁸ Letter from Henry Walker to Chairman Pat Miller, p. 1 (August 31, 2004)

⁹ Letter from Guy M. Hicks to Chairman Pat Miller, p. 1 (September 7, 2004)

¹⁰ See *BellSouth's Response*, p. 1 (September 22, 2004)

¹¹ 47 U.S.C. § 252(f)

¹² See *BellSouth's Response*, p. 8 (September 22, 2004)

On November 15, 2004, BellSouth and CompSouth filed a joint letter with the Authority announcing they had settled the dispute. Under the *Settlement of Disputed Claims*, BellSouth's SGAT will be withdrawn and of no force or effect as of the earlier of (1) the date of vacatur of the FCC's Interim Rules; (2) the date the FCC implements permanent rules; or (3) March 12, 2005. For any CLEC that had adopted or was operating under BellSouth's SGAT as of June 15, 2004, the withdrawal would not impact the rates, terms and conditions under which BellSouth provides service to that CLEC. Further, no CLEC may adopt BellSouth's SGAT in whole or in part as of June 15, 2004. Once BellSouth's SGAT is withdrawn, BellSouth will maintain its Standard Interconnection Agreement on its interconnection website and will make that Agreement available to the CLECs pursuant to federal law. If BellSouth makes changes to the posted Standard Interconnection Agreement, a CLEC may petition the Authority to resolve any dispute concerning those changes, and a CLEC retains the right to initiate an arbitration proceeding under Section 252(b)¹³ if the CLEC believes any provision of the Standard Interconnection Agreement is inconsistent with the law or orders of the Authority. In addition, the parties agreed that *CompSouth's Motion* should be dismissed with prejudice.

At the December 13, 2004 Authority Conference, counsel for CompSouth stated that the Southeastern Competitive Carriers Association ("SECCA") had not agreed to the *Settlement of Disputed Claims* and that he would withdraw as counsel for SECCA in this docket. In addition, counsel requested that the matter be deferred to allow SECCA to obtain representation and to file comments on the *Settlement of Disputed Claims* or to determine an appropriate action.¹⁴ As a result, the panel deferred further consideration of this matter until the January 10, 2005 Authority Conference.

¹³ 47 U.S.C. § 252(b)

¹⁴ See Transcript of Proceedings, pp. 61-62 (December 13, 2004)

JANUARY 10, 2005 AUTHORITY CONFERENCE

At the regularly scheduled Authority Conference held on January 10, 2005, SECCA announced that it was in agreement with the settlement and had no objection¹⁵ The panel then voted unanimously to approve the *Settlement of Disputed Claims*.

IT IS THEREFORE ORDERED THAT:

The *Settlement of Disputed Claims* filed by BellSouth Telecommunications, Inc. and Competitive Carriers of the South, Inc., attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein


Deborah Taylor Tate, Director


Sara Kyle, Director


Ron Jones, Director¹⁶

¹⁵ Transcript of Proceedings, p 21 (January 10, 2005)

¹⁶ Director Jones also moved that BellSouth be directed to file within 30 days of the withdrawal of the SGAT in paper and electronic format the price list for UNEs approved as part of the SGAT to replace the existing rates in the Permanent Prices tariff, Tariff No 01-00953. The majority disagreed with this motion and stated in response that UNE prices are available on BellSouth's website. Director Jones offers two comments in regard to this response. First, the reason for Director Jones's motion was to prevent inconsistencies between Tariff No. 01-00953 and BellSouth's price list for UNEs. The majority's response does not address this potentiality. As of the date of this decision, inconsistencies exist between Tariff No 01-00953, a valid tariff approved by this agency that has never been withdrawn, and the price list contained in BellSouth's SGAT. Upon withdrawal of the SGAT, the only effective price list on file with the Authority will be Tariff No 01-00953. Because the price list BellSouth places on its website will likely be based on the SGAT, the website will be inconsistent with Tariff No 01-00953. Second, the majority, in addition to approving the settlement agreement, relieved BellSouth of any obligation to file with the Authority rates for UNEs, impliedly waiving Authority Rules 1220-4-1- 03 and 04. The only justification offered in support of this position was avoidance of duplicity. Director Jones disagrees with this analysis as the duplicity sought to be avoided by the majority has been created solely by BellSouth. The Authority rule is that BellSouth file its rates with the Authority, not that it post the rates on its website. Tenn Comp R & Regs 1220-4-1- 03. In conclusion, until BellSouth seeks to withdraw its Permanent Prices tariff and such relief is granted, the Authority will continue to maintain a list of rates that have been deemed to comply with 47 U.S.C. § 252 and BellSouth will maintain a separate list of rates that may or may not comply with 47 U.S.C. § 252. Unnecessary confusion is likely to result from this state of affairs.

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth's Withdrawal of its Statement of Generally Available Terms and Conditions*

Docket No. 04-00261

SETTLEMENT OF DISPUTED CLAIMS

BellSouth Telecommunications, Inc. ("BellSouth"), on August 17, 2004, filed with this Authority, its letter notifying the Authority that BellSouth was withdrawing its Statement of Generally Available Terms ("SGAT"). In response thereto, on August 23, 2004, Competitive Carriers of the South, Inc. ("CompSouth") filed its Motion requesting that the Authority prevent BellSouth from withdrawing the referenced SGAT. In order to resolve this dispute, BellSouth and CompSouth, (collectively, the "Parties") have reached the following settlement and compromise regarding the withdrawal of the SGAT and request that the Authority enter an order adopting this settlement in final resolution of this docket.

1. Except as set forth in paragraph 2 below, BellSouth's SGAT will be withdrawn and of no force and effect as of the earlier of: (a) the date of vacatur of the Interim Rules announced in the FCC's Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements*, and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Dockets 04-313 and 01-338 (released August 20, 2004); (b) the date the FCC implements permanent rules in FCC Dockets 04-313 or 01-338; or (c) March 12, 2005;

2. For any CLEC that adopted, and was operating under, BellSouth's SGAT as of June 15, 2004, the withdrawal of BellSouth's SGAT pursuant to paragraph 1 above does not impact the rates, terms and conditions under which BellSouth provides service to such CLEC;

3. As of June 15, 2004, no CLEC may adopt BellSouth's SGAT in whole, or in part;

4. Once BellSouth's SGAT is withdrawn and no longer in force and effect, BellSouth will maintain the BellSouth Standard Interconnection Agreement on its interconnection website and make that Standard Interconnection Agreement available to CLECs pursuant to federal law;

5. In the event that BellSouth makes changes to its posted Standard Interconnection Agreement referred to in paragraph 4 to implement a change in law or orders of this Authority, a CLEC may petition this Authority requesting that the Authority resolve any dispute concerning such changes; however, this agreement shall not preclude BellSouth from asserting any defenses that it might ordinarily have to such a petition. In addition, where a CLEC requests to enter into BellSouth's Standard Interconnection Agreement, nothing in paragraph 4 above shall limit that CLEC's right to initiate an arbitration proceeding under Section 252(b) of the 1996 Act challenging any provision of the BellSouth Standard Interconnection Agreement that the CLEC believes is inconsistent with the law or orders of the Authority;

6. The Parties agree that CompSouth's Petition in Docket No. 04-00261 shall be dismissed with prejudice.

7. This settlement is contingent upon the Authority approving the settlement and issuing an Order with the terms set forth above.

8. The Parties agree that this settlement is made in order to avoid the further expense of litigation and that by entering into this settlement neither BellSouth nor CompSouth makes any admission regarding the validity of the position of the other party in this dispute.


Respectfully submitted,

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